



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1991

Ms. Chris G. Elizalde
Walsh, Judge, Anderson, Underwood
& Schulze, P.C.
P. O. Box 2156
Austin, Texas 78768

OR91-633

Dear Ms. Elizalde:

In a previous letter to this office, you asked whether certain information was subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your original request was assigned ID# 13991. In response to your request, we issued OR91-545.

In your letter of November 14, 1991, you call to our attention an incorrect assumption upon which certain conclusions in OR91-545 were based. You advise us that the individual requesting information about a former employee of the Lake Travis Independent School District (hereinafter "the district") did not represent the former employee. Accordingly, you request a reconsideration of OR91-545. Your request for a reconsideration is assigned ID# 14229.

The district, which you represent, has received a request for information relating to a former employee, in which nine categories of information are sought. You address only the seventh of those categories, which relates to the amount of money paid to the former employee to secure her resignation. You claim that such information is protected from required public disclosure by sections 3(a)(2) and 3(a)(3) of the Open Records Act. We presume the remaining information to be open. See Open Records Decision No. 565 (1990) at 10.

As for the information for which you claim exception, previous open records decisions issued by this office resolve your request. Open Records Decision No. 400

(1983) at 5 held that the test for section 3(a)(1) privacy elaborated in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), is applicable to section 3(a)(2). In *Industrial Foundation* the Texas Supreme Court ruled that common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." 540 S.W.2d at 685.

The information at issue here relates to the amount of money paid the former employee to secure her resignation. Information about a financial transaction between an individual and a governmental body is not excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 523 (1989) at 4; 480 (1987) at 7. Accordingly, the requested information may not be withheld from required public disclosure by common-law privacy interests under section 3(a)(2) of the Open Records Act.

You also claim the requested information is excepted from required public disclosure by section 3(a)(3). Open Records Decision No. 555 (1990) held that the section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4. However, once information relating to litigation has been disclosed to the opposing party in that litigation, section 3(a)(3) no longer applies. Open Records Decision No. 349 (1982) at 2.

From an examination of the records submitted to us for review, it is clear that the requested information has previously been disclosed to the opposing party in the contemplated litigation. We conclude, then, that the requested information may not be excepted from required public disclosure by section 3(a)(3) and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-633.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID# 14229, 13991, OR91-545

cc: Mr. Stephen W. LeBreton
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